IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3565 OF 2006

M/s.Computron Systems Pvt.Ltd. and ors. ...Applicants

vs.

Hemant N. Kampani and others ...Respondents

Mr.Girish Gulkarni and Mr.Ramesh Dube-Patil i/b M/s.Jay and Co.for the Applicants
Mr.Prakash Naik i/b Mr.Anoop Pandey for Respondent No.1

CORAM: A.S.OKA,J.
DATE : OCTOBER 19,2006.

P.C.:

1. Heard learned Counsel for the parties. This application under section 482 of the Code of Criminal Procedure, 1973 and under Article 227 of Constitution of India is filed by the Applicants who are the original accused in a complaint filed by the first Respondent. The challenge in this Petition is to the order dated 19th September 2006 passed by the learned Chief Metropolitan Magistrate, Mumbai by which the complaint filed by the first Respondent was ordered to be transferred from the court of one Special Metropolitan Magistrate to the court of another Special Metropolitan Magistrate.

2. The grievance made by the learned Advocate for the Applicants is that at the fag end of the trial an application for transfer is made and is entertained. He submitted that evidence running into 100 pages has been recorded by the learned trial Judge. If the order of transfer is upheld, the

learned Trial Judge who has extensively recorded the evidence will not be able to decide the case. He invited my attention to paragraph 5 of the impugned order. He submitted that on the ground mentioned in the said paragraph, transfer was sought. He submitted that only because learned Advocate for the first Respondent made a complaint with the Registrar General of this Court making allegations against the learned Judge, order of transfer could not have been passed. He submitted that the said complaint has nothing to do with the merits of the case. The complaint is filed with the allegation that that when one of the accused persons allegedly uttered offending words against the Advocate appearing for the first Respondent, the learned Judge did not intervene and did not take accused to the task. He submitted that filing of such complaint by the Advocate for the first Respondent is not sufficient for giving rise to an apprehension that the first Respondent will not get justice at the hands of the learned Magistrate. The learned Counsel for the first Respondent supported the impugned order and pointed out that there was reasonable apprehension in the mind of the first Respondent that he will not get justice from the learned Judge.

3. I have considered the submissions. Paragraph 5 of the impugned order reads thus :

> "5. It is also seen that advocate for applicant (original complainants) also wrote complaint-letter against the Magistrate Shri Shelke to Hon’ble the

> Registrar General of High Court, Bombay dated 10th August 2006. In the circumstances, the situation is such that is would create a lot of pressure for himself to decide the matter before him properly and instead of allowing him to scramble in such situation, it is better that the matter should be transferred which will have clear appearance that justice is done. Hence, I pass the application by passing following order."

There is some merit in the grievance made by the Advocate for the Applicants as regards what is observed in paragraph 5 of the impugned order, in the sense that the said paragraph is not happily worded. In the present case, the learned Advocate representing the first Respondent before the Trial Court has filed a complaint dated 10th August 2006 with the Registrar General of this court as regards behaviour of the learned Trial Judge. The learned Advocate for the Applicants pointed out that what is stated in the complaint is not proved and even the Applicants have joined the issues before the Registrar General of this Court on the grievances which are made in the said complaint.

4. Perusal of the documents annexed to the application shows that the allegations which are made by the learned Advocate for the first Respondent against the learned Trial Judge are of serious nature. Whether there is a substance in the said

allegations or not will be obviously decided by the concerned authority. However, fact remains that a responsible Advocate has filed a complaint in writing making allegations of serious nature against the learned Trial Judge. The allegations are relating to the alleged conduct of the learned Judge while dealing with the private complaint filed by the first Respondent.

5. The learned Chief Metropolitan Magistrate has taken an overall view of the matter and after considering the rival claims as regards what transpired before the learned Magistrate thought it fit to transfer the complaint filed by the first Respondent to another learned Judge.

6. The applicants have invoked jurisdiction of this Court under section 482 of the said Code. The said jurisdiction has to be exercised sparingly and in extraordinary cases. The jurisdiction under Article 227 of Constitution of India is to be exercised for ensuring that subordinate courts are kept in its own bounds and the said jurisdiction cannot be exercised in every case.

7. The reasons recorded by the learned Chief Metropolitan Magistrate, Mumbai in the impugned order may not be happily worded. However, it is difficult to find fault with the final order passed by him of transferring the case to another court.

The fact that a complaint filed against the learned Judge by the Advocate representing the first Respondent before the Registrar General of this Court is certainly a relevant factor to be considered while considering the prayer for transfer. I am not inclined to exercise jurisdiction either under section 482 of the said Code or under Article 227 of the Constitution of India for interfering with this order. However, it must be noted that the order of transfer passed by the learned Chief Metropolitan Magistrate and confirmation thereof will not be construed as any adjudication on the allegations made against the learned Judge. The order of transfer is being confirmed in peculiar facts of the case.

8. Subject to what is stated above, Application is rejected.

9. At this stage, the learned Advocate for the Applicants prays for stay of the proceedings to enable him to approach the higher court. Trial will remain stayed till 24th November 2006.

JUDGE